89-493

No.

FILED
SEP 6 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

J. JEROME OLITT,

Petitioner,

against

DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT, SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FIRST DEPARTMENT, NEW YORK SUPREME COURT

J. JEROME OLITT
Petitioner Pro Se
11 Clifton Lane
White Plains, NY 10605
(914) WH-6-7041

QUESTIONS PRESENTED

1. Whether petitioner was denied Due Process of law by the triers of the fact's decision to allow the prosecution to reopen their case to include new evidence and then not permitting the petitioner to reopen his case, in spite of a promise to the contrary?

2. Whether the petitioner was deprived of the opportunity to testify in his own defense?

PARTIES

The parties in the Appellate Division, New York Supreme Court and the New York Court of Appeals were the petitioner, J. Jerome Olitt, and the respondent, the Departmental Disciplinary Committee for the First Judicial Department, New York Supreme Court.

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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1989

J. JEROME OLITT,

Petitioner,

--against--

DEPARTMENTAL DISCIPLINARY COMMITTEE
FOR THE FIRST JUDICIAL DEPARMENT,
SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION,

Respondent.

==========

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, SUPREME COURT OF THE STATE OF NEW YORK

==========

Petitioner, J. JEROME OLITT, prays that a Writ of Certiorari issue to review the Order of the Supreme Court of the State of New York, Appellate Division, First Judicial Department, entered March 9th, 1989.

OPINION BELOW

A copy of the Opinion of the Appellate Division, First Judicial Department, Supreme Court of the State of New York, decided March 9th, 1989, is annexed hereto as Appendix B. This opinion is reported at 145 A.D.2d 273, 538 N.Y.S.2d 537.

A copy of the order of the New York Court of Appeals dismissing the appeal taken there as of right and denying the application for leave to appeal further, decided on June 8th, 1989, is annexed hereto as Appendix A. This opinion is reported at 74 N.Y 2d 701, 541 N.E.2d 418, 543 N.Y.S.2d 389.

JURISDICTION

The order of disbarment was entered on March 9th, 1989 and leave to appeal further was denied on June 8th, 1989 -- at which time the appeal taken as of right was likewise dismissed.

Thus, the jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

CONSTITUTION PROVISION INVOLVED

The Fifth Amendement of the United States Constitution, Due Process Clause, and the Fourteenth Amendment of the United States Constitution are involved herein.

STATEMENT OF THE CASE

On March 7th, 1978, petitioner was suspended from the practice of law in New York State for three years and until further order of the Court. On November 16th, 1978, the United States Court of Appeals for the Second Circuit, on appeal from a declaratory judgment action commenced by petitioner, found that the state court suspension was ineffective to preclude petitioner's practice before the federal courts, absent federal court disciplinary pro-

ceedings.

Petitioner thereupon discontinued his state practice and continued his federal practice. The federal court never commenced disciplinary proceedings against him.

After three year of state court suspension, petitioner chose not to apply to terminate his state court suspension.

On November 13th, 1986, the Departmental Disciplinary Committee's motion to disbar petitioner for his alleged violation of the suspension order was granted to the extent of referring the matter to the Committee for a hearing. The charges against petitioner included, inter alia, that his representation of parties in federal securities arbitrations constituted violation of the

state court order of suspension.

When the prosecution rested at the hearings, the petitioner rested without introducing any evidence, with the exception of an expert, whose testimony was to the effect that petitioner's representation of clients before various arbitral tribunals in securities-related arbitrations did not constitute a violation of the state court order of suspension.

The prosecution then moved to re-open its case to present evidence of one case where the petitioner was alleged to have represented a corporate entity, in which he was a principal, before the Supreme Court of the State of New York. Over the petitioner's objection, the motion was granted and the petitioner was promised by the chairman

of the committee that matters would be rolled back to the point before petitioner rested so as to afford petitioner a de novo opportunity to defend.

The evidence of the petitioner's isolated instance of appearance before the state court while suspended was introduced by oral stipulation of certain facts evidencing a temporary appearance in a case and immediate substitution of new counsel. However, petitioner was not allowed to reopen his defense on the theory that since he was not contradicting the new evidence, he had lost his right to defend.

On the basis of this hearing, petitioner was disbarred.

REASONS FOR GRANTING THE WRIT

I

PETITIONER WAS DEPRIVED OF HIS DUE PROCESS RIGHTS TO DEFEND: ONCE THE CASE WAS REOPENED FOR NEW PROSECUTION EVIDENCE, THE PETITIONER SHOULD HAVE BEEN PERMITTED TO OFFER ANY PROOF WHICH WOULD HAVE BEEN REASONABLY RELEVANT TO THE ULTIMATE ISSUES, THE CHARACTER OF THE OFFENSE ALLEGEDLY COMMITTED AND THE NATURE OF THE PENALTY

Petitioner should have been afforded full due process rights to the end that "there be received into evidence any competent proof which will assist the Appellate Division in the discharge of its delicate and difficult responsibility of determining what sanction, if any, be appropriate, will serve the best public interest and, at the same time assure [petitioner] full due process and fairness in the recognition of substantial interest that is his in the right to practice law." [Matter of Levy,

37 N.Y.2d 279, 333 N.E.2d 350, 372 N.Y.S.2d 41].

When the defense rested, there was no "smoking gun" although material in the record may have been pertinent to the determination of the nature of the sanction. When the case was re-opened (so that the prosecution could introduce a witness possessing evidence of the "smoking gun"), the importance of the previously introduced evidence relative to the determination of the sanction was enhanced. Thus, at that crucial point when the case was re-opened, the chairman, to maintain the basic fairness of the proceeding, clearly and incontrovertibly granted petitioner three opportunities to defend further, to wit:

(1) evidence to controvert

or rebut the "smoking gun" evidence;

(2) a de novo opportunity to consider petitioner's position; and

(3) a rolling back of the clock to the point where the prosecutor rested, thus cancelling the event of the defense resting.

It is also clear that the defense's act of resting was erased for all practical purposes and that the defense was afforded the opportunity to proceed anew, afresh, a second time [Black's Law Dictionary, 5th Ed., West Publishing Company].

Yet, after the prosecution had introduced the "smoking gun" testimony, these procedural safeguards, as promised to the defense and related by defense counsel to the petitioner, who

was not present at the time, were summarily erased and destroyed by the chairman. The record demonstrates that petitioner's counsel, at the invitation of the chairman when he re-opened the prosecution's case, asked for an adjournment to re-evaluate the defense position and inter alia, confer and discuss same with the petitioner, who was not present.

In denying the application, the chairman destroyed all of the procedural due process safeguards he had dictated into the record and granted to the defense when he re-opened the prosecution's case, by suddenly claiming

(1) The defense may not now introduce evidence except to controvert the stipulated testimony of the "smoking gun". [Record at 312-313]

(2) Defense counsel's

consideration of his position should have been made before the stipulation was accepted by the Hearing Panel to the end that the defense would be ready to proceed immediately after the stipulation with waiting witnesses. [Record at 313]

In so doing, all of the procedural safeguards given to the defense when the prosecutor's case reopened were summarily destroyed. The newfound limitation placed upon the defense of being able to rebut the new prosecution evidence only with testimony then readily available revoked the defense's prerogative to totally consider its position anew with a rolling back of the clock to before it had rested.

Petitioner was deprived of a fair hearing.

Thus, the chairman effectively precluded petitioner from having an opportunity to take the stand in his own defense and to deny and explain the following points contained in the prosecution's proposed final report:

(a) That the position of House Counsel for both Muller and Company, Inc. and Philips, Appel Walden, Inc. involved the overall supervision of a vast number of inside (1) and outside (scores) attorneys and law firms handling matters in numerous states, including New York, and petitioner's said positions did not involve the practice of New York law.

(b) The "smoking gun" incident recounted in the prosecution's re-opened case, occurring eight years after the imposition of petitioner's three year suspension, was an isolated

incident totally out of character for petitioner.

[We recognize that the suspension order also stated that the suspension was effective until the further order of the Appellate Division.]

(c) Since petitioner was an attorney, licensed to practice in New York, albeit suspended, and in good standing and permitted to practice in the Federal Court System, his use of professional stationery was correct. Nevertheless, we would have contended that petitioner's secretary simply used the incorrect stationery in lieu of the usual stationery which bore the legend "Practice Limited to Federal Courts."

(d) Petitioner's job responsibilities did not include nor did he draft employment agreements, review

employment agreements, draft or complete employment termination notices, review office leases, advise concerning office leases or investigate unlawful activity, except in relation to securities-related arbitration proceedings.

(e) As an owner of the corporations he worked for, petitioner had a right to give his opinion concerning the corporation's actions.

(f) Petitioner had an absolute right to represent parties -- especially his employers -- before any arbitral tribunals with regard to securities-related arbitration proceedings.

(g) Since the complainant's employer, Philips, Appel & Walden, Inc., was underwriting complainant's losses in the 1984 arbitration proceeding, petitioner had no

obligation to reveal to complainant the fact that petitioner was suspended in New York.

(h) In 1986 when the complainant's employment with Philips, Appel & Walden, Inc. was terminated, Philips, Appel & Walden, Inc. sued complainant and sought injunctive relief. Complainant counterclaimed for wrongful termination of employment, etc. However, petitioner was not counsel in such litigation and the litigation was not commenced in New York County; it was commenced in the Superior Court of the State of New Jersey.

(i) Petitioner never advised complainant that petitioner was handling negotiations and/or drafting of contracts for the possible sale of Philips, Appel & Walden, Inc. to another

company. An outside law firm was handling such matters and reporting directly to petitioner's superiors.

(j) During the arbitration proceeding commenced by complainant (Walter W. Roth) against Philips, Appel & Walden, Inc., complainant proceeded pro se and with counsel. There were various arbitration hearing sessions in which Mr. Roth's counsel never appeared and which Mr. Roth handled totally pro se. The Roth/Olitt meeting alleged, held at the suggestion of a friend of Mr. Roth, who had telephoned petitioner directly, however, did not include any discussion of the merits of the case and discussion of settlement figures was relegated to a subsequent time when Mr. Roth's counsel would be present and participate.

Additionally, petitioner

was precluded from testifying in his own behalf and introducing testimony which would refute the prejudicial general allegations of wrongful behavior introduced and admitted into evidence at the hearing over defense objection. This is significant because of the repeated allegation of prosecution that the allegations went unrefuted.

Clearly, petitioner has a property interest in his license sufficient to invoke the protection of the Due Process Clause. Equally as clear is the fact that once the case-in-chief was re-opened for the prosecution, it was a denial of due process not to re-open the case for the petitioner. Petitioner had concluded, correctly or incorrectly, that there was no prima facie case made out against him before the prosecution was

granted leave to re-open and that a full defense was unnecessary. Thus, even the irrelevant and prejudicial allegations of miscellaneous misconduct went unrefuted.

However, when the prosecution was granted leave to re-open its case, and introduce the "smoking gun," the importance of all prior evidence was enhanced. While the petitioner had conceded the existence of the fact upon which the prosecution rested, mitigation was essential to protect his rights. The disciplinary proceeding involved both a finding of guilt or innocence as well as the measure of discipline to be imposed. Certainly, if the fact that the overt acts constituted an isolated incident in an otherwise unblemished period of suspension and the various prejudicial evidence of miscellaneous misconduct had been refuted, petitioner would have been

able to argue that the harsh disbarment was inappropriate in the circumstances.

Significantly, when the District Court thereafter directed petitioner to show cause why he should not be disbarred there, the District Court did not temporarily suspend petitioner from practice -- as is the usual case. Additionally, upon petitioner's submission to that court in response to the order to show cause, petitioner presented for the first time the total facts of the case and the matter has been sub judice since May of this year.

CONCLUSION

Petitioner respectfully prays that the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

J. JEROME OLITT

Petitioner Pro Se

Dated: White Plains, New York
September 6th, 1989

APPENDIX A

ORDER OF THE NEW YORK COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the eighth day of June A.D. 1989

PRESENT, HON. SOL WACHTLER, Chief Judge, presiding.

1-24 Mo. No. 500
In the Matter of J. Jerome Olitt, a Suspended Attorney and Counselor-at-Law,

Departmental Disciplinary Committee for the First Judicial Department,

Respondent,

J. Jerome Olitt (admitted as Jerome Olitt),

Appellant.

A motion for leave to appeal to the Court of Appeals in the above cause

having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, on the Court's own motion, that the appeal be and the same hereby is dismissed, upon the grounds that (1) insofar as it is taken from that portion of the Appellate Division order granting petitioner's motion to hold respondent in contempt, the order does not finally determine the proceeding within the meaning of the Constitution, and (2) insofar as it is from that portion of the Appellate Division order granting petitioner's motion to disbar respondent, no substantial constitutional question is directly involved; and it is

Order of the New York Court of Appeals

ORDERED, that the said motion, insofar as it seeks leave to appeal from so much of the Appellate Division order granting petitioner's motion to hold respondent in contempt, be and the same hereby is dismissed upon the ground that that portion of the order does not finally determine the proceeding within the meaning of the Constitution; and it is

ORDERED, that the said motion for leave to appeal otherwise be and the same hereby is denied.

Donald M. Sheraw
Donald M. Sheraw
Clerk of the Court

APPENDIX B

ORDER OF THE APPELLATE DIVISION NEW YORK SUPREME COURT

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on March 9, 1989

Present:
Hon. Francis T. Murphy, Presiding Justice
Theodore R. Kupferman
E. Leo Milonas
Ernst H. Rosenberger
Betty Weinberg Ellerin, Justices

M-4529 M-4848

In the Matter of J. Jerome Olitt, a suspended attorney and counselor-at-law:

Departmental Disciplinary Committee For the First Judicial Department,

Petitioner,

J. Jerome Olitt (admitted as Jerome Olitt),

Respondent.

Order of the Appellate Division
New York Supreme Court

An order of this Court having been made and entered on March 7, 1978 [M-4132 and M-4509], inter alia, suspending respondent, J. Jerome Olitt (who was admitted, as Jerome Olitt, to practice as an attorney and counselor-at-law in the State of New York on June 23, 1954, at a term of the Appellate Division of the Supreme Court of the State of New York Second Judicial Department), for a period of three years, effective April 7, 1978, and until the further order of this Court,

And an order of this Court having been made and entered on November 13, 1986 [M-2878 & M-4171], inter alia, granting the motion of petitioner, the Departmental Disciplinary Committee for the First Judicial Department, for an

order disbarring said respondent, and for other relief, only to the extent of referring the matter to the Departmental Disciplinary Committee for the First Judicial Department, for a hearing to determine if Mr. Olitt's practice extends to matters of New York law,

And an order of this Court having been made and entered on May 3, 1988 [M-1590], granting petitioner's motion for an enlargement of time in which to complete a hearing on this matter,

And the Departmental Disciplinary Committee for the First Judicial Department, by Michael A. Gentile, its attorney, having moved this Court on November 9, 1988, for an order confirming the Hearing Panel's Report, which recommends disbarring respondent, holding

respondent in contempt of court, enjoining respondent from conducting New York Stock Exchange arbitration proceedings and requiring respondent to pay the costs and disbursements of these proceedings,

And respondent, J. Jerome Olitt (admitted as Jerome Olitt), by Richard B. Herman, his attorney, having cross-moved, on December 2, 1988, for an order denying the motion in its entirety, disaffirming the Hearing Panel's Report and referring this matter back to the Hearing Panel for additional evidence,

And petitioner, the Departmental Disciplinary Committee for the First Judicial Department, having interposed an answer to said cross-motion requesting that this Court deny respondent's cross-

motion in all respects, and accept the reply affirmation of Richard M. Maltz dated November 9, 1988, in consideration of petitioner's Motion to Confirm the Hearing Panel Report,

Now, upon reading and filing the papers with respect to the motion and cross-motion, and due deliveration having been had thereon and upon the Opinion Per Curiam filed herein, and this Court having found that respondent is guilty of both civil and criminal contempt, it is hereby unanimously

Ordered, that the petition be and the same hereby is granted, the Hearing Panel Findings of Fact and Conslusions of Law are hereby confirmed, and the cross-motion is denied, and it is further unanimously

Order of the Appellate Division
New York Supreme Court

Ordered: that said respondent be and hereby is disbarred from practice as an attorney and counselor-at-law in the State of New York; that respondent's name be struck from the roll of attorneys and counselors-at-law in the State of New York; that said respondent be and hereby is commanded to desist and refrain from the practice of law in any form, either as principal or agent, clerk or employee of another; that said respondent be and hereby is forbidden to appear as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority; that said respondent be and hereby is forbidden to give to another an opinion as to the law or its application or any advice in relation thereto; and that said respondent be and hereby is directed, within 30

days of the date of this order, to fully comply with the provisions of Title 22, Section 603.13, of the Rules of this Court, a copy of which is annexed hereto and made a part hereof, all effective March 9, 1989, and it is further unanimously

Ordered that the contempt charges are hereby referred to Hon. Emilio Nunez, 100 Church Street, New York, New York 10007, who is appointed Referee in this proceeding to hear and report with respect to the imposition of sanctions; and respondent is assessed $100 costs of these motions. Matter of Spar, 100 AD2d 71

Enter:

Francis X. Galdi
Deputy Clerk.

Order of the Appellate Division
New York Supreme Court

TITLE 22, SECTION 603.13 OF THE RULES OF THE APPELLATE DIVISION, SUPREME COURT, FIRST JUDICIAL DEPARTMENT

603.13 Conduct of disbarred, suspended and resigned attorneys. (a) Compliance with Judiciary Law. Disbarred, suspended and resigned attorneys at law shall comply fully and completely with the letter and spirit of sections 478, 479, 484 and 486 of the Judiciary Law relating to practicing as attorneys at law without being admitted and registered, and soliciting of business on behalf of an attorney at law and the practice of law by an attorney who has been disbarred, suspended or convicted of a felony.

(b) Compensation. A disbarred, suspended or resigned attorney may not share in any fee for legal services performed by another attorney during the period of

his removal from the bar. A disbarred, suspended or resigned attorney may be compensated on a quantum meruit basis for legal services rendered and disbursements incurred by him prior to the effective date of the disbarment or suspension order or of his resignation. The amount and manner of payment of such compensation and recoverable disbursements shall be fixed by the court on the application of either the disbarred, suspended or resigned attorney or the new attorney, on notice to the other as well as on notice to the client. Such applications shall be made at special term in the court wherein the action is pending or at special term of tthe Supreme Court in the county wherein the moving attorney maintains his office if an action has not been commenced. In no event shall the

combined legal fees exceed the amount the client would have been required to pay had no substitution of attorneys been required.

(c) Notice to clients not involved in litigation. A disbarred, suspended or resigned attorney shall promply notify by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigated or administrative matters or proceedings pending in any court or agency, of his disbarment or suspension or resignation and his consequent inability to act as an attorney after the effective date of his disbarment or suspension or resignation and shall advise said clients to seek legal advice elsewhere.

(d) Notice to clients involved in litigation.

(1) A disbarred or suspended or resigned attorney shall promptly notify, by registered or certified mail, return receipt requested, each of his clients who is involved in litigated matters or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of his disbarment or suspension or resignation and consequent inability to act as an attorney after the effective date of his disbarment or suspension or resignation. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in his place.

(2) In the event the client does not obtain substitute counsel before

the effective date of the disbarment or suspension or resignation, it shall be the responsibility of the disbarred or suspended or resigned attorney to move pro se in the court in which the action is pending, or before the body in which an administrative proceeding is pending, for leave to withdraw from the action or proceeding.

(3) The notice to be given to the attorney or attorneys for an adverse party shall state the place or residence of the client of the disbarred or suspended or resigned attorney. In addition, notice shall be given in like manner to the Office of Court Administration of the State of New York in each matter in which a retainer statement has been filed.

(e) Conduct after entry of order. The disbarred or suspended or resigned attorney, after entry of the disbarment or suspension order, or after entry of the order accepting the resignation, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period between the entry date of the order and its effective date he may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

(f) Filing proof of compliance and attorney's address. Within 10 days after the effective date of the disbarment or suspension order or the order accepting the resignation, the disbarred or suspended or resigned attorney shall file with the clerk of the Appellate Division

for the judicial department where the disciplinary proceedings were conducted an affidavit showing:

(1) that he has fully complied with the provisions of the order and with this section; and

(2) that he has served a copy of such affidavit upon the petitioner or moving party.

Such affidavit shall also set forth the residence or other address of the disbarred or suspended or resigned attorney where communications may be directed to him.

(g) Appointment of attorney to protect clients' interests and interests of disbarred or suspended attorney. Whenever it shall be brought to the court's attention that a disbarred or suspended attorney shall have failed or may fail to

comply with the provisions of subdivisions (c), (d) or (f) of this section, this court, upon such notice to such attorney as this court may direct, may appoint an attorney or attorneys to inventory the files of the disbarred or suspended attorney and to take such action as seems indicated to protect the interests of his clients and for the protection of the interests of the suspended or disbarred attorney.

(h) Any attorney so appointed by this court shall not be permitted to disclose any information contained in any file so inventoried without the consent of the client to whom such file relates except as necessary to carry out the order of this court which appointed the attorney to make such inventory.

(i) This court may fix the compensation to be paid to any attorney appointed by this court under this section. This compensation may be directed by this court to be paid as an incident to the costs of the proceeding in which the charges are incurred and shall be charged in accordance with law.

(j) Required records. A disbarred or suspended or resigned attorney shall keep and maintain records of the various steps taken by him under this Part so that, upon any subsequent proceeding instituted by or against him, proof of compliance with this Part and with the disbarment or suspension order or with the order accepting the resignation will be available.

APPENDIX C

OPINION OF THE APPELLATE DIVISION NEW YORK SUPREME COURT

SUPREME COURT, APPELLATE DIVISION

First Department, November 1988

Francis T. Murphy, P.J.
Theodore R. Kupferman
E. Leo Milonas
Ernst H. Rosenberger
Betty Weinberg Ellerin, JJ.

M-4529 M-4848

In the Matter of J. Jerome Olitt, a suspended attorney and counselor-at-law:

Departmental Disciplinary Committee For the First Judicial Department,

Petitioner,

J. Jerome Olitt (admitted as Jerome Olitt),

Respondent.

Disciplinary proceedings instituted by the Departmental Disciplinary Committee for the First Judicial Department.

Opinion of the Appellate Division
New York Supreme Court

Respondent was admitted to the Bar at a Term of the Appellate Division of the Supreme Court for the Second Judicial Department on June 23, 1954. By order of this Court made and entered on March 7, 1978, respondent was suspended from the practice of law for a period of three years effective April 7, 1978 and until the further order of this Court. By further order of this Court made and entered on November 13, 1986 petitioner's application seeking disbarment of respondent was referred to the petitioner for a hearing.

Richard M. Maltz, of counsel (Michael A. Gentile, attorney for petitioner)

Richard B. Herman, attorney for the respondent

Opinion of the Appellate Division
New York Supreme Court

M-4529 - November 9, 1988

In the Matter of J. Jerome Olitt, a Suspended Attorney

PER CURIAM

Respondent, J. Jerome Olitt was admitted to the practice of law in New York by the Second Judicial Department on June 23, 1954. He was suspended from practice by the Appellate Division, Second Department for two years in 1960 and reinstated in 1962. In an order dated March 7, 1978, we suspended respondent from the practice of law for three years effective April 7, 1978 and until further Order of the court. 61 AD2d 416.

Respondent's suspension arose out of events which took place in 1965 when

respondent, who was representing a builder, sought to have delayed a zoning change application, submitted on behalf of a rival builder. Respondent thereafter delivered money in cash to a person who claimed he could effect such delay. Respondent has never applied for reinstatement and remains suspended pursuant to this Court's Order. The Suspension Order specifically mandates that:

> Ordered that said J. Jerome Olitt (admitted as Jerome Olitt) be and he hereby is suspended from the practice as an attorney and counselor-at-law in the State of New York for a period of three (3) years effective April 7, 1978 and until the further order of this Court, with leave to apply for reinstatement after the expiration of said period of three (3) years.
>
> ...
>
> [respondent] is commanded to desist and refrain from the practice of

> law in any form, either as principal or agent, clerk or employee of another,
>
> ...
>
> [respondent] is forbidden to appear as an attorney or counselor-at-law before any court, judge, justice, board, commission, or other public authority
>
> ...
>
> [respondent] is forbidden to give to another an opinion as to the law or its application or any advice in relation thereto, for a period of three (3) years effective April 7, 1978 and until the further Order of this Court.

In 1955, respondent was admitted to the Bars of the United States District Courts for the Southern and Eastern Districts of New York, where he apparently remains in good standing.

In 1978, respondent brought a proceeding in the Federal Court to establish that he was not precluded from practicing therein by virtue of the State

Court suspension. In affirming the dismissal of his complaint, it was indicated that the State Court's determination was not conclusive as to practice in the federal jurisdiction (Olitt v Murphy, 453 F.Supp. 354, aff'd unp. mem. 591 F.2d 1331, cert denied 444 U.S. 825).

In 1986, the Departmental Disciplinary Committee moved to have respondent disbarred and punished for contempt for practicing law in violation of his suspension, and we directed a hearing to determine if respondent's practice extended to matters of New York law. 124 AD2d 499.

It is the contention of respondent that (a) his practice as "house counsel" of a brokerage house, in which he has a controlling interest, (b) his 1984 registration as an attorney with the New York

State Office of Court Administration, pursuant to Judiciary Law § 468-a, which did not indicate, in any way, that his practice was limited to federal courts or federal matters nor that he was under suspension, (c) his appearance for the brokerage firm in a lawsuit in the Supreme Court, County of New York and filing of legal papers therein in his own name, (d) his consultation with and giving advice to a client who has a claim against another broker, and (e) his drafting leases and contracts for the brokerage firm, do not impinge upon his argument that he appears only in arbitration proceedings before the New York Stock Exchange on behalf of a company in which he has an interest. He considers the latter a pro se appearance. Moreover, he contends that a lay

person may practice before the Arbitration Panel.

The Hearing Panel of the Departmental Disciplinary Committee recommended that respondent be disbarred and the matter be referred to the appropriate authorities to consider whether to bring contempt proceedings against respondent for violating the Order of Suspension or criminal proceedings for the unauthorized practice of law.

Belatedly, respondent moved to reopen the hearing, which motion was denied, to present additional information, which action he apparently took in order to further delay the proceedings.

It is well-settled that the practice of law by a suspended attorney is unlawful and warrants immediate disbarment. See e.g., Matter of Crescenzi, 136 AD2d

386 (1st Dept. 1988); Matter of Brill, 131 Ad2d 3 (1st Dept. 1986); Matter of Kaufman, 105 AD2d 145 (1st Dept. 1985). In this case, there is no reason to deviate from this rule.

Accordingly, the petition is granted to the extent of disbarring respondent and striking his name from the roll of attorneys and counselors-at-law; finding respondent to be guilty of both civil and criminal contempt, referring the contempt charges to a Referee for the imposition of sanctions, and assessing costs of these motions upon respondent. Matter of Spar, 100 AD2d 71.

All concur.

Order filed.